

ASB
7. (Amended) A method according to claim 1, wherein said juniper berry oil is added to said malt beverage in an amount of 0.015 ppm to 0.070 ppm based on said malt beverage.

REMARKS

Claim 1 has been amended to incorporate the limitations of claim 6, which has been canceled. Claim 1, as amended, defines the objected to phrase "threshold of taste" in terms of ppm. Additionally, the term "about" has been dropped from the claims. Minor clarifying changes have been made in claims 2 and 3. Pursuant to 37 CFR 1.121, a marked copy of the amended claims showing the changes made therein accompanies this amendment.

Turning to the Examiner's objection to the term "juniper oil" as being "indefinite", Applicant respectfully submits that there is nothing indefinite about the phrase "juniper oil" in the context of the subject application. Juniper oil is commercially available from a variety of sources. Even assuming arguendo, the chemical constituents of juniper berry oil from different sources may vary slightly, this does not make the claim indefinite. The test of definiteness is whether a person with skill in the art can understand the language of the claim to know the metes and bounds of the claims. Simply put, if one adds juniper berry oil to a malt beverage in an amount of 0.010 ppm to 0.350 ppm, they will know they are infringing.

Moreover, other U.S. patents employ similar claim language. See, for example, claims 6 and 7 of U.S. Patent 4,816,220 and claim 8 of U.S. Patent 5, 397,497 (copies enclosed for the convenience of the Examiner).

Turning to the art rejection, all of the claims have been rejected as being obvious over the "Trees for Life" reference. Reconsideration is respectfully requested. The Trees for Life reference specifically and repeatedly discusses the use of juniper berries to add flavor to foods and beverages. See, for example, the third paragraph in which it is stated, "The berries are

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ground and added to sauces... to add a bitter, spicy flavor...". See also in the same paragraph the statement that the berries "were used to flavor bread and cakes". And, in the same paragraph, the writer reports, "The best known use of the berries is in flavoring gin." In a similar manner, in the same paragraph, the writer reports, "The berries are also used to flavor other alcoholic beverages...". And, in the next paragraph, the writer reports, "... the berries were also used to flavor whiskey". (Underlining added for emphasis.)

Applicant's claims, on the other hand, specifically require the addition of juniper berry oil in "a below a threshold amount of 0.010 ppm to 0.350 ppm based on said malt beverage". This is directly contrary to the teachings of the Trees for Life literature reference.

And, contrary to the Examiner's suggestion, Applicant has not merely "recognized another advantage which would flow naturally from following the suggestion of the prior art". In fact, Applicant has disregarded the teachings of the prior art, i.e. of adding juniper berry oil to flavor a beverage, and instead has added an extremely small and defined amount of juniper berry oil which is below the threshold of taste, to a brewed, fermented malt beverage, and found that such carefully controlled small addition unexpectedly results in a reduction in bitterness normally imparted to such beverage by hops. There is no disclosure or suggestion within the Trees for Life reference of adding juniper berry oil to a brewed fermented malt beverage, or for that matter, any beverage at the levels contemplated, or that addition of juniper berry oil at the levels contemplated would have any beneficial effect, let alone the effect of reducing bitterness.

Quite apart from the foregoing, it is noted, the present invention concerns natural products which are notoriously unpredictable. Thus, the fact that a particular natural product, i.e. juniper berry oil, at one concentration, may provide flavoring properties, or aid in digestion or

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cure for various stomach ailments as taught by Trees for Life, would, when used at very different concentrations, provide a completely and unrelated different property.

Accordingly, it is submitted that Applicant's claimed invention would not be obvious from the Trees for Life reference.

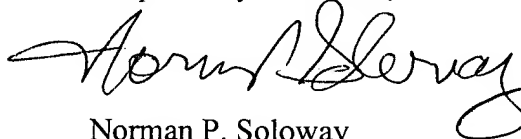
The finality of the restriction requirement is noted. Applicant respectfully submits that claim 8 is in fact a linking claim, and that claims 9-11 should be examined with the elected method claims.

However, so as to be fully responsive, Applicant confirms the election of the method claims 1-7, and it is requested that the product claims 8-11 be maintained in this application, without further action, for possible rejoinder and/or for filing of a Divisional Application.

Having dealt with all the objections raised by the Examiner, it is believed the application now is in order for allowance. Early and favorable action are respectfully requested.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our deposit account number 08-1391.

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Assistant Commissioner of Patents, Washington, D.C. 20231 on January 9, 2003, at Tucson, Arizona.

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By Diana Carr



MARKED COPY OF AMENDED CLAIMS

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MARKED CLAIMS SHOWING CHANGES MADE:

1. (Amended) A method of reducing bitterness of a brewed fermented malt beverage which comprises adding to said fermented beverage juniper berry oil in [an] a below a threshold of taste amount [below the threshold of taste] of 0.010 ppm to 0.350 ppm based on said malt beverage.

2. (Amended) A method according to claim 1, wherein said juniper berry oil is added during aging of the beverage.

3. (Amended) A method according to claim 1, wherein said juniper berry oil is added following aging of and before packaging of the beverage.

7. (Amended) A method according to claim [6] 1, wherein said juniper berry oil is added to said malt beverage in an amount of [about] 0.015 ppm to 0.070 ppm [of] based on said malt beverage.